IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

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S.B. CIVIL WRIT PETITION NO.3571/2002

Vikas Adhikari, Panchayat Samiti, Choti Sadari, Chittorgarh.

Versus

Mohd. Aslam and ors.

Date of Order : 17.5.2005

PRESENT

HON'BLE MR. JUSTICE R.P.VYAS

Ms.V. Bora, for the petitioner
Mr.B.S. Charan, for the respondent

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Heard at admission stage.

The instant petition has been filed by the petitioner with the prayer that the judgment and award dtd. 4.12.2000 (Annex.10) passed by the learned Labour Court, Bhilwara may be quashed and set aside.

The brief facts of the case are that the respondent No.1 - workman raised an industrial dispute before the Conciliation Officer. The conciliation proceedings failed and the Conciliation Officer submitted failure report to the appropriate Government.

The appropriate Government vide notification dtd. 7.7.1995 referred the matter for adjudication to the learned Labour Court, Bhilwara.

The learned Labour Court issued notices to the parties. The respondent No.1 – workman submitted statement of claim alleging inter alia, that he was employed as Class IV employee with the Panchayat Samiti on 7.10.1991 and he worked up to 28.2.1993 and by an oral order, his services were terminated on 1.3.1993 and, according to him, since then he was working as Class IV employee, he was paid only Rs.22/- per day.

It was also alleged that his services of the respondent No.1 - workman were terminated in flagrant violation of the mandatory provisions of Industrial Disputes Act, 1947 (for short “the Act of 1947”).

Written statement was filed by the petitioner, in which it was alleged that the termination was brought in accordance with law and there was no violation of Section 25F of the Act of 1947. It was further submitted that the respondent No.1 – workman is not entitled to any relief prayed for.

After recording evidence of both the parties, the learned Labour Court, Bhilwara vide its judgment and award dtd.4.12.2000 (Annex.10), dismissed the claim petition filed by the respondent No.1-workman.

The respondent No.1-workman filed a writ petition before this Court bearing S.B.Civil Writ Petition No. 3845/97. This Court, vide judgment dated 7.8.2000, disposed of the writ petition and remanded the matter back to the learned Labour Court and directed the learned Labour Court to decide the matter expeditiously as far as possible, strictly in accordance with law.

After remand, the learned Labour Court decided the matter afresh vide its award dated 4.12.2000 (Annex.-10), whereby the claim petition filed by the respondent No.1-Workman was allowed and he was ordered to be reinstated in service, with full back-wages from the date of termination of his services.

In the instant petition, the main contention of the petitioner is that respondent No.1 was engaged only for cleaning the office on daily wage basis @ Rs.22/- per day. He was engaged for a particular work and

there was no such post, on which he could have claimed to have been appointed.

It has also been submitted by the learned counsel for the petitioner that the petitioner has not completed 240 days of service in a calender year, therefore, provisions of Section 25-F of the Act of 1947 are not applicable. The further contention of the learned counsel for the petitioner is that the learned Labour Court has failed to consider the fact that while directing reinstatement of the respondent No.1 – workman that he was engaged for casual work on daily wage basis, therefore, there was no post on which he could be reinstated.

I have heard the learned counsel for the petitioner at length and scrutinised and scanned the material available on record.

The learned Labour Court has recorded a finding of fact on the basis of material available on record that the respondent No.1 – workman has worked continuously from 7.10.1991 to 28.2.1993 and this fact was not controverted by the learned counsel for the petitioner. The respondent No.1 – workman also produced the documents evidencing the

fact that he has worked with the petitioner from 7.10.1991 to 28.2.1993 continuously. The learned Labour Court has also drawn an adverse inference in view of the fact that the petitioner did not possess the requisite documents, which were in their possession, to prove the fact that the respondent No. 1-workman was not in service continuously from 7.10.1991 to 28.2.1993. Accordingly, the learned Labour Court allowed the claim petition and directed the reinstatement of the respondent No.1 – workman.

In my considered opinion, the findings of facts, recorded by the Labour Court, are based on correct appreciation of entire evidence and material available on record and it cannot be said that the findings of the Labour Court are erroneous or perverse or patently unreasonable or based on no material on record. The findings of facts recorded by the Labour Court do not suffer from any basic illegality or infirmity.

Apart from that, under Article 227 of the Constitution of India, the High Court cannot interfere with the exercise of the discretionary power vested in the inferior Court or Tribunal, unless its findings are

clearly perverse or patently unreasonable. While exercising the powers under Article 227 of the Constitution of India, the High Court does not act as Court of appeal.

The High Court's power of revision under Article 227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly, in cases where grave injustice would be done unless the High Court interferes. It cannot be used as appellate or revisional power nor will the High Court, in exercise of this power, substitute its own judgment for that of the inferior Court, whether on a question of fact, or of law, or interfere with the intra vires exercise of a discretionary power, unless it is arbitrary or capricious, or unless there was no evidence at all on which the inferior court could have come to conclusion it did or there was error of finding on a jurisdictional fact.

From perusing the judgment and award dtd.4.12.2000 (Annex.10) passed by the learned Labour Court, Bhilwara it does not reveal that there is patent illegality and irregularity or error of law apparent on the

face of record and the findings recorded by the learned Labour Court are perverse.

Thus, the judgment and award dtd. 4.12.2000 (Annex.10) passed by the learned Labour Court, Bhilwara cannot be said to be suffering from the basic infirmity and illegality and the same does not require any interference by this Court under Article 226/227 of the Constitution of India.

. For the reasons mentioned above, the present writ petition is dismissed. No order as to costs.

(R.P. VYAS)J.

Rm/